

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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|--|---|--------------------------------|
| -----X                                   |   |                                |
| Robert L. GARBER, <i>et al.</i> ,        | : |                                |
|  | : |                                |
| Plaintiffs,                              | : |                                |
|  | : | Case No. 07 Civ. 11422 (CM)    |
| -against-                                | : |                                |
|  | : | <b>STATEMENT CONCERNING</b>    |
| WASHINGTON MUTUAL, INC., <i>et al.</i> , | : | <b>MOTIONS TO APPOINT LEAD</b> |
|  | : | <b>PLAINTIFF, APPROVE</b>      |
| Defendants.                              | : | <b>PLAINTIFF'S COUNSEL AND</b> |
|  | : | <b>CONSOLIDATE</b>             |
|  | : |                                |
|  | : |                                |
|  | : |                                |
| -----X                                   |   |                                |

Presently pending before the Court are motions filed by putative class members Massachusetts Pension Reserves Investment Management Board [Dkt. #4], New York City Police and Fire Pension Funds [Dkt. #7], and WaMu Institutional Investor Group [Dkt. #12] for appointment as lead plaintiff, approval of plaintiff's counsel as lead counsel, and consolidation.<sup>1</sup>

Washington Mutual, Inc., takes no position at the present time as to which of the various putative class members should be appointed lead plaintiff and which of their counsel should take the lead. However, Washington Mutual respectfully submits that no ruling should be entered on any of the pending motions until the Judicial Panel on Multidistrict Litigation rules on Washington Mutual's pending motion to transfer each of the Securities Actions to the U.S. District Court for the Western District of Washington (*Hon. Marsha J. Pechman*) for coordinated

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<sup>1</sup> Substantially identical motions were filed in three related actions: *Koesterer v. Washington Mutual, Inc., et al.*, No. 07 Civ. 9801 (CM) (S.D.N.Y., filed Nov. 5, 2007); *Abrams, et al. v. Washington Mutual, Inc., et al.*, No. 07 Civ. 9806 (AKH) (S.D.N.Y., filed Nov. 5, 2007); and *Nelson, et al. v. Woods, et al.*, No. 07 Civ. 1809 (MJP) (W.D. Wash., filed Nov. 7, 2007) (collectively with the above-captioned case, the "Securities Actions").

and/or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 (the “MDL Motion”).<sup>2</sup>

While the various moving parties were obliged under the Private Securities Litigation Reform Act (“PSLRA”)<sup>3</sup> to seek lead plaintiff status within 60 days of the filing of this case, the PSLRA directs courts not to decide such motions until *after* all pending motions to consolidate related actions have been decided:

If more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not [decide the lead plaintiff motion] until after the decision on the motion to consolidate is rendered.

15 U.S.C. § 78u-4(a)(3)(B)(ii).<sup>4</sup>

Given the pendency of the MDL Motion and the mandatory language set out in the PSLRA, Washington Mutual respectfully requests that the Court defer decision on the pending motions until the MDL Motion has been decided. Such deferral will not result in undue delay, as the Judicial Panel on Multidistrict Litigation has set the MDL Motion for a hearing on January 30, 2008, and no party has opposed the substance of the MDL Motion.<sup>5</sup> To the contrary,

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<sup>2</sup> See *In re Washington Mutual, Inc. Sec., Derivative & ERISA Litig.*, No. 1919 (J.P.M.L., filed Nov. 28, 2007). See also Notice of MDL Filing [Dkt. No. 3] (providing notice to this Court and the parties of the MDL Motion). The MDL Motion concerns a total of fifteen cases. In addition to the four Securities Actions, there are eight cases purportedly pled under ERISA and three cases pled as shareholder derivative actions. All of the ERISA and derivative cases are pending in the Western District of Washington. In addition, there are three derivative actions pending in state court in Washington.

<sup>3</sup> Pub. L. No. 104-67, 109 Stat. 737 (1995), *codified in pertinent part at* 15 U.S.C. § 78u-4.

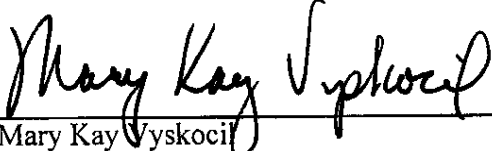
<sup>4</sup> Consistent with this limitation, the parties in this case have stipulated (and this Court has “So Ordered”) that defendants are under no obligation to answer or otherwise respond to the complaint until at least thirty days after a ruling on the MDL Motion. See Stipulation and Order [Dkt. #15] (Jan. 8, 2008). Nearly identical stipulations were agreed to in each of the fourteen other cases subject to the MDL Motion.

<sup>5</sup> The only objections filed to date concern whether the Panel should transfer the fifteen cases to the Southern District of New York rather than the Western District of Washington, and whether coordination is preferable to substantive consolidation.

deferring decision on the pending motions will permit one assigned Judge to hear and determine all of the various requests at once, and will thereby "secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.

Dated: January 18, 2008

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*Attorneys for Washington Mutual, Inc.*

**CERTIFICATE OF SERVICE**

I, Farrah Faverey, hereby certify that on this 18<sup>th</sup> day of January, 2008, I caused true and correct copies of:

STATEMENT CONCERNING MOTIONS TO APPOINT LEAD PLAINTIFF,  
APPROVE PLAINTIFF'S COUNSEL AND CONSOLIDATE

NOTICE OF APPEARANCE FOR MARY KAY VYSKOCIL

NOTICE OF APPEARANCE FOR ROBERT J. PFISTER

to be served in the following matters:

*Garber, et al vs. Washington Mutual, et al* (Case No. 07 Civ. 11422 - SDNY)

*Koesterer, et al vs. Washington Mutual, Inc., et al* (Case No. 07 Civ. 9801 - SDNY)

*Abrams, et al vs. Washington Mutual, Inc., et al* (Case No. 07 Civ. 9806 - SDNY)

by ECF to the Southern District of New York and by Federal Express upon the parties in the attached service list.

  
Farrah Faverey

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|---|-----------------------|--|
| <p><b>Joel Abrams</b><br/><i>individually and on behalf of all others similarly situated</i></p> <p><b>Brian Roffe</b><br/><i>Individually and on behalf of all others similarly situated</i></p> | <p>represented by</p> | <p><b>Darren J. Robbins</b><br/>Coughlin Stoia Geller Rudman &amp; Robbins LLP<br/>655 West Broadway, Suite 1900<br/>San Diego, CA 92101<br/>(619) 231-1058</p> <p><b>David C. Walton</b><br/>Coughlin Stoia Geller Rudman &amp; Robbins, LLP<br/>655 W. Broadway, Suite 1900<br/>San Diego, CA 92101-3301<br/>(619) 231-1058</p> <p><b>Jack Gerald Fruchter</b><br/>Abraham Fruchter &amp; Twersky LLP<br/>One Penn Plaza, Suite 2805<br/>New York, NY 10119<br/>(212) 279-5050</p> <p><b>Samuel Howard Rudman</b><br/>Coughlin Stoia Geller Rudman &amp; Robbins, LLP<br/>58 South Service Road, Suite 200<br/>Melville, NY 11747<br/>(631) 367-7100</p> |
| <p><b>Robert L. Garber</b><br/><i>individually and on behalf of all others similarly situated</i></p>   | <p>represented by</p> | <p><b>Alfred G. Yates, Jr.</b><br/>519 Allegheny Building<br/>429 Forbes Avenue<br/>Pittsburgh, PA 15219<br/>(412) 391-5164</p> <p><b>Evan J Smith</b><br/>Brodsky &amp; Smith, L.L.C.<br/>240 Mineola Blvd.<br/>Mineola, NY 11501<br/>(516) 741-4977</p>  |

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|--|----------------|--|
| <b>Dennis Koesterer</b><br><i>on behalf of himself and all others<br/>similarly situated</i> | represented by | <b>James Abram Harrod, III</b><br>Wolf Popper LLP<br>845 Third Avenue<br>New York, NY 10022<br>(212) 759-4600<br><br><b>Robert Craig Finkel</b><br>Wolf Popper LLP<br>845 Third Avenue<br>New York, NY 10022<br>(212) 759-4600 |
| <b>Massachusetts Pension Reserve<br/>Investment Management Board</b>                         | represented by | <b>Richard A Speirs</b><br>Zwerling, Schachter & Zwerling<br>41 Madison Avenue<br>New York, NY 10010<br>(212) 223-3900   |
| <b>New York City Police and Fire<br/>Pension Funds</b>                                       | represented by | <b>Peter Dexter St. Philip, Jr</b><br>Lowey Dannenberg Bemporad Selinger<br>& Cohen, P.C.,(WP)<br>White Plains Plaza<br>1 North Broadway, 5th Floor<br>White Plains, NY 10601<br>(914 ) 997-0500                               |
| <b>Ontario Teachers Pension Plan<br/>Board</b>   | represented by | <b>Gerald Harlan Silk</b><br>Bernstein Litowitz Berger & Grossmann<br>LLP<br>1285 Avenue of the Americas<br>New York, NY 10019<br>(212) 554 1282   |
| <b>Burton Rosenfield</b>   | represented by | <b>Nancy Kaboolian</b><br>Abbey Spanier Rodd Abrams & Paradis,<br>LLP<br>212 East 39th Street<br>New York, NY 10016<br>(212) 889-3700  |
| <b>WaMu Institutional Investor<br/>Group, et al</b>  | represented by | <b>Geoffrey Coyle Jarvis</b><br>Grant & Eisenhofer, PA (DE)<br>Chase Manhattan Centre<br>1201 North Market Street<br>Wilmington, DE 19801<br>(302) 622-7040  |